

corded, by the express terms of that act, "in any manner affect the creditors of the party making such deed, who may trust such party after the date of said deed." And as the party making this deed became indebted to these complainants in a sum exceeding twelve thousand dollars after the 4th of September, 1845, it follows that they are not to be affected by it.

This, however, is not an application to record the deed of the 4th of September, 1845, but the party claiming under the last renewal of that deed, insists, that by the recording of this latter instrument, he is to be dealt with as if he had in all respects complied with the act of 1729.

The case of *Pannel and Smith vs. The Farmers Bank*, 7 *Har. and Johns.*, 202, shows the views entertained by a former Chancellor of this court, upon the act of 1785, ch. 72, in reference to a decree ordering a deed to be recorded, which had not been recorded in time, upon the rights of subsequent purchasers and creditors.

The Court of Appeals, in the case of *Hudson vs. Warner and Vance*, 2 *Har. and Gill*, 415, decided, that as the object of the act of 1729, ch. 8, was to protect creditors from prior secret conveyances, any such creditor, who had notice of such conveyance could not be considered as falling in the class of those for whose benefit the act was passed, and as Hudson, in that case, had actual notice, though the deed was not recorded, he was not to be regarded as an injured creditor, within the meaning of the act.

But in this case, there is no pretence of actual notice, and the pleadings show, that there was a fixed design, persevered in for more than twelve months, to prevent actual, or constructive notice from being communicated to the public, of the existence of this deed. Whatever may have been the cause for this, whether the result of an agreement, promise, or mere acquiescence in the expressed request of the mortgagor, and to save his feelings from mortification, it is so clearly repugnant to the letter and policy of the legislature, that it seems to me impossible it can escape condemnation.

It has been argued on the part of the defendant, Griffith, that